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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/777,446	02/12/2004	Barend Den Ouden	A78.12-0001	4789
27367 7590 04/04/2008 WESTMAN CHAMPLIN & KELLY, P.A. SUITE 1400 900 SECOND AVENUE SOUTH MINNEAPOLIS, MN 55402-3319				
EXAMINER BORISSOV, IGOR N				
ART UNIT 3628		PAPER NUMBER		
MAIL DATE 04/04/2008		DELIVERY MODE PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

## Application No.

10/777,446

## Applicant(s)

LOUDEN, BAREND DEN

## Examiner

Igor N. Borissov

## Art Unit

3628

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 31 January 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-9, 18-26 and 28 is/are pending in the application.
- 4a) Of the above claim(s) 4, 8, 9, 21, 25 and 26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-7, 18-20, 22-24 and 28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/30/2007 has been entered.

### ***Response to Amendment***

Amendment received on 01/31/2008 is acknowledged and entered. Claims 10-17 and 27 have been canceled. Claims 1-9, 18-26 and 28 are currently pending in the application.

### ***Response to Restriction/Election Requirements***

Applicant elects the claims of Group A and Species 1 (claims 1-3, 5-7, 18-20, 22-24 and 28) without traverse. Accordingly, non-elected claims 4, 8, 9, 21, 25 and 26 are withdrawn from consideration by the examiner.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 18-20, 22-24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 18 recites: "calculating or receiving at the combination server isolated energy prices in the first area and the second area based on supply and demand in each respective area *in each respective area*", which is confusing. It is not clear what method step is actually claimed: *calculating or receiving*.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1-3, 5-7, 18-20, 22-24 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peljto (US 7,299,212 B2) in view of Cheliotis et al. (US 2005/0278262 A1).**

Peljto et al. teaches a method regulating the energy flow in an energy network, said network comprising at least a first area (control area) of interconnected producers and consumers of energy and a second area (control area) of interconnected producers and consumers of energy, in which the energy network comprises at least one network connection that limits the transportation capacity of the energy network between said first area and said second area, the method comprising:

Claims 1 and 18,

receiving data indicative of intended energy production by the producers and the intended energy consumption by the consumers for each of the first and second areas (C. 3, L. 49-56);

determining isolated energy prices in the first area and in the second area based on supply and demand in each respective area (Cl. 1, L. 36-43);

determining available transportation capacity of the energy network between said first area and said second area (C. 4, L. 59-67);

determining an effect on energy prices in said first area and in said second area on the basis of the isolated energy prices and of transmission constraints which are

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specified using DC network model (C. 4, L. 61-63), and on the basis of the available transportation capacity (transmission line capacity) (C. 5, L. 21-28);

outputting the effect on energy prices in said first area and the second area for use by at least one of the producers, the consumers and an operator of the network connection (C. 5, L. 21-25).

While Peljto et al. teaches that said determining an effect on energy prices in said first area and in said second area is conducted on the basis of transmission constraints which are specified using DC network model (C. 4, L. 61-63), Peljto et al. does not explicitly disclose simulating transportation of energy over the network.

Cheliotis et al. teaches a method for modeling a transportation capacity (bandwidth) of a network during constructing telecom commodity spot price process based on supply and demand, wherein the transportation capacity is modeled to provide data for a decision whether to increase, decrease or maintain the transport capacity and to determine the price at which the demand can be satisfied, leading to a corresponding contract (0012-0015).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Peljto et al. to include simulating transportation of energy over the network, as disclosed in Cheliotis et al. because it would advantageously provide simple and realistic picture of real-world network demand behavior, and would allow a good simplification of the calculation mathematics which is accurate enough to provide acceptable results, as specifically stated in Cheliotis et al. (0012). Furthermore, in this case each of the elements of the cited references combined by the Examiner performs the same function when combined as it does in the prior art. Thus, such a combination would have yielded predictable results. See *Sakraida*, 425 U.S. at 282, 189 USPQ at 453. Therefore, Supreme Court Decision in *KSR International Co. v. Teleflex Inc.* (KSR, 82 USPQ2d at 1396) forecloses the argument that a specific teaching, suggestion, or motivation is required to support a finding of obviousness. See the recent Board decision *Ex arte Smith*, --USPQ2d--, slip op. at 20, (Bd. Pat. App. & Interf. June 25, 2007).

Claims 2, 3, 5-7, 19, 20, 22-24 and 28. See reasoning applied to independent claims.

***Response to Arguments***

Applicant's arguments with respect to claims 1-3, 5-7, 18-20, 22-24 and 28 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Igor Borissov whose telephone number is 571-272-6801. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John W. Hayes can be reached on 571-272-6708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Igor N. Borissov/  
Primary Examiner, Art Unit 3628  
03/29/2008